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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
	Case Nos. 00 B 41065 (SMB)
RANDALL'S ISLAND FAMILY GOLF CENTERS, INC., et al.,	through 00 B 41196 (SMB)
	(Jointly Administered)
Debtors.	

OBJECTION OF DEBTORS AND DEBTORS-IN-POSSESSION TO MOTION OF COMMERCIAL REFRIGERATION, INC. FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY

TO THE HONORABLE STUART M. BERNSTEIN,
UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), for their objection (the "Objection") to the Motion (the "Motion") of Commercial Refrigeration, Inc. ("Commercial") requesting an order granting relief from the automatic stay of section 362 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), respectfully represent as follows:

Introduction

1. By its Motion, Commercial is seeking relief from the automatic stay in order to (i) file a mechanic's lien against

the leasehold interest of Sports Plus New Rochelle, Inc., one of the above-captioned Debtors ("Sports Plus"), in property located in New Rochelle, New York (the "Sports Plus Facility"), (ii) to commence a foreclosure action to foreclose on such mechanics lien, and (iii) to "exercise its right of ownership in certain equipment installed by Commercial". There is no basis, however, for granting Commercial any relief from the stay.

2. First, the statutory time for Commercial to file a notice of mechanics lien has run. Under the New York Lien Law, Commercial had eight months from the completion of its work to file a notice of mechanics lien. Since Commercial completed its work in January 2000, Commercial can no longer file its notice of mechanic lien. Moreover, even if Commercial was timely seeking to file its notice of mechanics lien, there is no basis for granting Commercial relief from the stay to foreclose on the lien. As discussed below, Commercial would have a lien for approximately $47,000 on equipment that is critical to Sports Plus' business and for which the Debtor paid approximately $925,000.

3. Moreover, the contract purports to grant Commercial a security interest in the ice arena refrigeration equipment (the "Equipment") installed by Commercial only until the purchase price was paid in full. The Debtors have paid the purchase price in full. The only amounts owing are for additional labor not contemplated by the original contract. As such, Commercial has no ownership or security interest in the Equipment and there are no grounds for granting relief from the

automatic stay. Additionally, even if Commercial was granted a security interest in the Equipment, since Commercial never filed a financing statement to perfect its security interest, Commercial is simply an unsecured creditor in these chapter 11 cases. The bottom line, however, is that regardless of whether Commercial has a valid, perfected security interest, since the Debtors have significant equity in the Equipment and the Equipment is necessary for an effective reorganization, there is no basis for granting Commercial relief from the stay.

Background

4. On December 17, 1998, Family Golf Centers, Inc., one of the above-captioned debtors ("Family Golf"), entered into a "Sale of Goods Agreement" (the "Agreement") with Commercial, whereby Commercial agreed to sell and install an ice arena refrigeration system at the Sports Plus Facility for the purchase price of $874,565 (the "Purchase Price"). The Agreement provided that the Purchase Price would be paid as follows: twenty five percent was payable upon signing the Agreement, fifty percent was payable upon delivery of certain equipment, fifteen percent was due upon commissioning the system and ten percent was due within 30 days of commissioning the system. The Agreement further provided that until the Purchase Price was paid in full, Commercial would have a lien on the Equipment. Family Golf has paid the Purchase Price in full. In addition, upon information and belief Commercial never filed financing statement to perfect its lien.

5. From the time the Agreement was executed until the installation of the Equipment was completed, five work orders were executed between Family Golf and Commercial. The Work Orders required additional labor by Commercial but did not affect the sale or purchase price of the Equipment. Those Work Orders required Family Golf to pay an additional $97,612.52.

6. The installation of the Equipment was completed by January 2000. As noted above, Family Golf paid the Purchase Price in full and made several payments towards the balance owing under the Work Orders. As of the Fling Date, Family Golf has paid Commercial approximately $925,000, leaving an unpaid balance of approximately $47,000. Attached as Exhibit A is statement of account, dated as of April 26, 2000, which was provided to Family Golf by Commercial.

7. On or about August 11, 2000, Commercial filed the Motion seeking relief from the automatic stay so as to file a mechanics lien, foreclose on the lien and remove the Equipment.

Argument

8. The automatic stay is vitally important to the Debtor's efforts to reorganize. "The Purpose of the automatic stay is to preserve what remains of the Debtor's insolvent estate and to provide a systemic equitable liquidation procedure for all creditors . . . ." In re Holtkamp, 669 F.2d 505, 508 (7th Cir. 1982). As the Supreme Court has explained: "The automatic stay provision of the Bankruptcy Code, § 362(a), has been described as one of the most fundamental debtor protections provided by the bankruptcy laws." Midlantic Nat'l Bank v. New Jersey Dep't of

Envtl. Protection, 474 U.S. 494, 503 (1986) (footnote and internal citations omitted).

9. Moreover, under section 362(d)(2) of the Bankruptcy Code, the Court may only grant a creditor relief from the stay to act against property of the estate if (i) the Debtor does not have equity in the property and (ii) the property is not necessary for an effective reorganization. 11 U.S.C. § 362(d)(2). Although Commercial claims that the Debtor has no equity in the Equipment and that the Equipment is not necessary for an effective reorganization, nothing could be further from the truth.

10. With respect to the Debtor's equity in the Equipment, as explained above, the Agreement purported to grant Commercial a lien on the Equipment until the Purchase Price was paid in full. Family Golf paid the Purchase Price in full, and only owes approximately $47,000 under the Work Orders. Moreover, Commercial never perfected its purported security interest. Thus, even if Commercial has a valid security interest as a result of the amounts owing under the Work Orders –- which it does not –- Commercial would only have a lien for the $47,000 unpaid balance. Thus, the Debtors have significant equity in the Equipment.

11. Likewise, Commercial's assertion that the Equipment is not necessary for the Sports Plus' reorganization is patently ridiculous. The Sports Plus Facility is an ice skating rink. The Equipment makes the ice for the ice rink; without the

Equipment, Sports Plus has no ice rink, and without the ice rink, Sports Plus has no hope to reorganize.

12. Lastly, as noted above, with respect to the unpaid amounts under the Work Orders, the statutory time for Commercial to file a mechanics lien has run. Section 10 of the New York Lien Law provides:

> Notice of lien may be filed at any time during the progress of the work and the furnishing of the materials, or, within eight months after the completion of the contract, or the final performance of the work, or the final furnishing of the materials, dating from the last item of work performed or materials furnished.

New York Lien Law § 10 (emphasis added). Here, since Commercial completed its work in January 2000, more than eight months has elapsed since the work under the Agreement was completed. Thus, Commercial may no longer file a mechanics lien, and granting the requested relief would be pointless.

13. Additionally, even if Commercial were entitled to file its mechanics lien, there is no basis for granting Commercial relief from the automatic stay to foreclose on the lien. To date, Family Golf has spent approximately $925,000 under the Agreement and the Work Orders, and the unpaid balance for all of the work performed by Commercial is approximately $47,000. As a result, since the Debtors have significant equity in the Equipment and, as explained above, the Equipment is necessary for an effective reorganization, the grounds for obtaining relief from the automatic stay have not been met. See 11 U.S.C. § 362(d)(2).

Conclusion

14. Family Golf paid the Purchase Price in full, and only owes Commercial approximately $47,000 for additional work under the Work Orders. The Debtors thus have significant equity in the Equipment. Moreover, the Equipment is critical to Sports Plus' reorganization efforts. As such, Commercial has not shown any basis justifying relief from the stay.

For the reasons set forth above, the Debtors request that the Court deny the relief requested in the Motion.

Dated: New York, New York
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